

at least one implanted electrode, coupled to the pulse generator and attached to a vagus nerve of the patient at a location below the patient's diaphragm, for applying said electrical signal to said vagus nerve to treat said neuropsychiatric disorder; and

a programming unit for programming said pulse generator to define said electrical signal.

35. (new) The system of claim 34 wherein said pulse generator is implanted in the body of the patient.

36. (new) The system of claim 34 wherein said pulse generator is external to the body of the patient and is wirelessly coupled to said at least one electrode.

37. (new) The system of claim 34 wherein said programming unit is capable of programming at least one parameter selected from the group consisting of current magnitude, frequency, pulse width, on-time and off-time.

REMARKS

In the present Office Action, claims 23-32 have been considered. Original claims 1-22 have been deleted, and claims 29-32 were added by preliminary amendment. In the present amendment, each of claims 23-32 has been amended and new claims 33-37 have been added. After entry of the amendment, claims 23-37 remain for consideration.

Claims 23-32 stand rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-22 of US. Patent No. 6,622,047. Applicants acknowledge the provisional rejection. However, because no claim has been indicated as allowable, a terminal disclaimer is premature at present. Applicants will timely file a terminal disclaimer upon indication of allowable claims properly rejected on this basis.

Claims 23-32 further stand rejected as anticipated under 35 U.S.C. §102(b) by US 5,299,569 to Wernicke et al. According to the Examiner:

The '569 patent teaches all of the structure of the above claims. The placement of the electrodes, as set forth in applicant's claims, is considered to be intended use not a structural limitation.

Office Action of 11/25/05, at 3 lines 6-8.

Applicants have amended independent claims 23 and 30 to recite a system comprising an implanted electrode that is coupled to the vagus nerve at a particular location, i.e., "at a location in a range from about two to about three inches above or below the patient's diaphragm." The claims as amended recite a structural element that is neither disclosed nor suggested by the cited reference. Newly added independent claim 34 recites an electrode that is "attached to said vagus nerve at a location below the patient's diaphragm." This structural element is likewise not disclosed or suggested by the cited reference.

Applicants submit that the claims as presently presented are allowable over the cited reference. Accordingly, it is respectfully requested that the proposed Amendment be entered, the claims reconsidered, and that early notice of allowability be provided.

02/27/06
Date

Respectfully submitted,

Timothy L. Scott
Timothy L. Scott
Reg. No. 37,931
Cyberonics, Inc.
100 Cyberonics Blvd.
Houston, Texas 77058

Phone: (281) 727-2652
Fax: (281) 853-2505

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date below:

02/27/06
(Date)

Dianne Mangrum
(Name of person making deposit)

Dianne Mangrum
(Signature)